

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Notice of Proposed Rulemaking)	
)	
)	CS Docket No. 02-52
Appropriate Regulatory Treatment for)	
Broadband Access to the Internet Over)	
Cable Facilities)	
)	

REPLY COMMENTS OF THE TOWN OF CHAPEL HILL, NORTH CAROLINA

These comments are filed by the Town of Chapel Hill, N.C., in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the Town of Chapel Hill believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Chapel Hill, North Carolina is a Town with a population of 51,598. It is also the community with the University of North Carolina's main campus. The Town is served by Time Warner Cable, which has approximately 13,577 subscribers within the Town. At this time, the cable system serving our community offers subscribers:

- 19 Basic Tier channels;
- 51 Standard Tier channels;
- 13 Analog Premium or Pay-Per-View channels;
- 47 Digital Tier channels; and
- More than 120 Digital Premium or Pay-Per-View digital channels.

Cable modem service is offered in our community.

2. Our franchise and cable modem service.

Our franchise was issued in 1996 and was negotiated with the understanding the system would be utilized as a broadband system. Under Section 2.3 of the Town's Ordinance Granting a Cable Television Franchise to Time Warner, "Gross Revenues" are defined broadly:

"Gross Revenues means all revenue received by the Grantee, arising from or attributable to the sale of cable television video or audio program services, videotext services and video games provided by the Grantee within the Town or derived from the operation within the Town of its System, including, but not limited to, monthly fees charged to Subscribers for Basic Cable Service; monthly fees charged to Subscribers for any optional video or audio program service; monthly fees charged to Subscribers for any tier of video or audio program service other than Basic Cable Service; installation, disconnection and reconnection fees for the provision of video or audio program services; leased channel fees; video or audio program service equipment rentals; advertising revenue received by Grantee from video or audio program services; revenues received by Grantee from home shopping Channels; and revenues received by Grantee from the provision of data transmission, point to point telecommunications, telephone or telephony services. This term does not include:

- Converter or other equipment deposits;
- Bad debts;
- Franchise Fees;
- Supplemental Public Access Rate Charges;
- Any sales, excise, or any other taxes collected by Grantee on behalf of any state, city, or other governmental unit;
- Refunds to subscribers by Grantee;

- Commissions paid to others;
- Reimbursement for expenses (including returned check fees, copy expenses and similar items); or items excluded by local, state, or federal law.

Notwithstanding the foregoing, revenues received for the provision of data transmission, point to point telecommunications, telephone or telephony services shall be included in gross revenues (1) only to the extent permitted by law; and (2) only if all other providers of similar services in the Town are subject to equivalent fee and compensation requirements for use of the public rights of way in the Town. Where advertising or other revenue arising from or attributable to the sale of cable services by Grantee is received by unrelated third parties not under control of Grantee, and some portion of that revenue is remitted to Grantee, only the portion of such revenues paid Grantee shall be included in the calculation of Gross Revenues.

Pursuant to that provision, we were entitled to receive franchise fees on cable modem service. We received \$41,592 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms. We estimate that we will lose more than \$150,000 over the next two (2) years if we cannot charge a fee on revenues from cable modem service.

Neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service in our community.

3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. In 2001, we received more than 100 service complaint calls. Approximately 20 of these were attributable to modem service problems. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we receive complaints about promotional practices, the complaint may apply to both services.
- A customer complaint call may involve connection or reception problems related to both cable and modem services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services. The provisions in the Cable Franchise relating to the FCC customer service standards and enforcement procedures are just as important for the community for cable modem service as it is with other services.

Cable modem service is also subject to the following requirements under our franchise:

- The operator is prohibited from demanding exclusive contracts as a condition of providing service to MDUs and others.

- Section 3.4 of the Cable Franchise makes accommodations for Future System Modifications: “To assure that Grantee's Cable System continues to reflect the general cable industry state-of-the-art throughout the term of the Franchise, Grantor and Grantee agree to utilize Grantee's cable systems in the Cities of Raleigh and Durham for comparison. It is understood and agreed between Grantor and Grantee that at the time this Franchise is entered into, significant new technologies and services are undergoing review and may soon be made part of cable television services and capabilities in the region. It is agreed by Grantee that it will include new services and technologies offered in Raleigh and Durham into the System serving Grantor where such services and technologies are compatible with the System and economically feasible.”

However, there are also important protections that did apply under our franchise that may not apply if cable modem service is NOT a cable service, including default and enforcement and performance bond requirements.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. For example, the Chapel Hill Public Library provides patron access to the Internet, and the Town provides an increasing amount of information through the Town's web site and through e-mailed notification processes. The funds

that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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